

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **VICE CHAIRMAN TOM DELL**, on January 25, 2001 at 3:00 P.M., in Room 137B Capitol.

ROLL CALL

Members Present:

Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Douglas Mood, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Roy Brown (R)
Rep. Gary Forrester (D)
Rep. Carol C. Juneau (D)
Rep. Alan Olson (R)
Rep. Trudi Schmidt (D)

Members Excused: None.

Members Absent: Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Bob Story (R)

Staff Present: Staci Leitgeb, Committee Secretary
Stephen Maly, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 242, 1/23/01, HB 271,
1/23/01, HJ 5, 1/23/01
Executive Action: None

HEARING ON HJ 5

Sponsor: REPRESENTATIVE JOAN HURDLE, HD 13, BILLINGS

Proponents: Pat Ortmeyer, Women's Action for New Direction
Paul Wright, Self, Billings
Wendy Young, WEEL, Working For Economy in Economic Liberation

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE JOAN HURDLE, HD 13, BILLINGS said HJ 5 talks about how to make a better distribution of federal budget money. This resolution has been introduced in 12 states and it passed in Vermont, Massachusetts and Michigan. Women's lobby organizations are concerned about the billions of dollars going into national defense. The last national budget contained \$3.3 billion beyond what the Pentagon asked for. This happened because many Congressmen vote appropriations for military expenditures in their home district as part of their local jobs program, whether it is needed for national defense or not. Women are beginning to address this issue because the needs for improved family and children's programs are too great to ignore. If we are going to have a jobs program, we need one that helps our citizens instead of the arms brokers.

Proponents' Testimony:

Pat Ortmeyer, Missoula, representing a National Women's Peace Organization called **Women's Action for New Directions**. She said the women legislator's lobby is a product of their organization. She distributed a "FACT SHEET on The Better Budget Resolution", **EXHIBIT (feh20a01)**, She said she is concerned that the current U.S. defense budget is \$310 billion. This is 22 times greater than the military budgets of Iran, Iraq, Syria, Sudan, North Korea, Libya and Cuba combined. It is 52% of all U. S. discretionary spending. Education, health care, job training, housing assistance, environmental protection, and all other discretionary budget items must be funded out of the remaining 48% of the federal budget. This resolution calls upon national officials to eliminate waste and unnecessary expenses with the military budget. Excessive defense spending is hurting Montanans, because when federal programs are cut, the state must pick up the tab. We can safely decrease military spending without compromising national security. The U. S. has the most powerful military defense in the world, and it is appropriate to decrease military spending: the cold war is over and Russia spends 85% less on its military than the Soviet Union did. U. S. weapon procurement is already 40% greater than all of our allies combined and 75% greater than either Russia or China. Proposed weapons upgrades are unnecessary and costly, and driven by defense contractors who build them, more than by need. More jobs would be created if that money were invested in other domestic programs, it is very wasteful, and it is not serving our current military needs. There have been three separate reviews since

1990 that have concluded that we face different threats than before the collapse of the Soviet Union, but we are still preparing to fight the cold war, using the same weapons and procurement methods as before and ignoring what it is costing us. Current threats are more likely to be regional and ethnic conflicts, proliferation of weapons of mass destruction and instability in Russia. Our massive weapons systems which are designed for a U.S. - U.S.S.R. conflict do not help us address these new threats. New weapons systems will not protect us from terrorist attacks like the one on the USS Cole, but they will rob money from the things we do need. There are growing problems at home that pose the real threats to our security: 44 million Americans have no health insurance: one in five U. S. children lives in poverty. In 1986, the federal share of education spending was nearly 10%, it is now around 6%. Social services block grant funding went from \$5.6 billion in 1980 to just over \$1 billion in 1999. While Montana saw the second fastest growth rate in child poverty, our share of the proposed national missile defense program will be \$94 million over 15 years. There are a lot better ways to spend \$6 million a year for 15 years. One reliable estimate that came from Lawrence Corb, Former Assistant Secretary of Defense under President Reagan, is that we can cut \$62 billion, or 20% of the U. S. military budget, with no appreciable effect. We need to send a message to our national decision makers, that we see what our countries real needs are, and we know there are better ways to spend our money.

Paul Wright, Billings, representing self said he has been reading "A Bulletin Of The Atomic Scientists", which lists the various weapons systems. He distributed a letter from FCNL, Friends Committee on National Legislation requesting a shift in military spending to investments in true human security,

EXHIBIT (feh20a02). He said the Pentagon is spending \$2 million every four minutes. He detailed recent costs of some larger items. The B2 Bomber, 20 of these cost \$2.2 billion each. The F22 Fighter, 442 of those cost \$72 billion. The C17 Transport, 120 at \$340 million each, added up to \$45 billion. He said that a standard 747 commercial jet can fly twice as far or carry twice as much as one of these, and wondered why they don't use a standard 747 fitted for cargo. Nuclear missile defense costs \$60 billion. But, if an enemy were to deploy biological or chemical weapons, one way to get around the defense shield would be for the warhead to break off into small bomblets. Each small bomb could carry deadly chemicals, and be impossible for defense. If there were nuclear warheads on the attaching missile, the defense could possibly be decoyed by a mylar shield but in only one out of three instances. The Osprey Helicopter, in which 29 marines have died in two crashes, each costs \$43 million and the program costs \$40 billion. Dr. Bolden, PHD, is a nuclear physicist who

proposed a cut back of 25% to the peak (1990) budget cost. Colonel Dennis Long said even the military is having trouble justifying these systems. A 1998 "Dear Abby" clipping said the US is first in military spending, military technology, and in the number of nuclear bombs and warheads and quoted President Eisenhower: "every gun that is made, every warship launched, every rocket fired, signifies in the final sense a theft from those who hunger and are not fed, those who are cold and not clothed".

Wendy Young representing WHEEL, a low income group of families currently living in poverty. She said social services is one of the places that gets robbed by the military budget. There is a record number of families without health insurance, parents who work two or more jobs, a severe lack of child care, schools that are underfunded, and people depending on food banks. She said that Cuba has a higher literacy rate than the United States. She quoted Statistics on Health Indicators, **EXHIBIT(feh20a03)**, and Statistics on Literacy Indicators, **EXHIBIT(feh20a04)**. The United States is currently 28th in Literacy, and 27th in Health care. She distributed information called "How do you Define National Security, Threats to Montana's Security", **EXHIBIT(feh20a05)**, and "Military Spending Creates Far Fewer Jobs than other types of federal investment", **EXHIBIT(feh20a06)**. With just the money from one Osprey Helicopter Montana, \$43 million, Montana could eliminate the mental health crisis, fund education and have money left for economic development.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. CURTISS asked how many countries have the capability of launching intercontinental missiles. **REP. HURDLE** deferred to **Pat Ortmeier** who said Russia is the only one currently with the distance to reach the U. S.; it is their ICBM missile. China is working on that development.

REP. CURTISS asked how many peace keeping missions the U. S. has at the present time. **REP. HURDLE** said there are 10,000 U. S. troops out of about 2.3 million involved in peace keeping operations. Other countries have more troops involved than U. S. forces do. **REP. CURTISS** said she understood we have peace keeping missions with 121 different countries. **REP. HURDLE** said there are only several dozen sanctioned peace keeping operations under the United Nations. **REP. CURTISS** said she is referring to countries where we have a military presence.

Closing by Sponsor:

REP. HURDLE distributed "Montana VS The Pentagon", **EXHIBIT(feh20a07)**, which shows how military spending has affected Montana directly. She said she is asking for support in a bipartisan way to get this fiscally conservative resolution to the floor and help send a message to our national congress.

HEARING ON HB 242

Sponsor: **REP. ROY BROWN, HD 14, BILLINGS**

Proponents: **Bill Ernhardt, amateur radio operator, self**
 Steve Schmitz, amateur radio operator, self

Opponents: **None**

Informational Witnesses: **Patrick Heffernan, Montana Logging Association**

Opening Statement by Sponsor:

REP. ROY BROWN, HD 14, BILLINGS said HB 242 is a result of problems a constituent had with illegal CB radio transmissions that interfere with ham radios. These unapproved CB transmissions are supposed to be handled by the Federal Communications Commission (FCC). They were never able to enforce this, and it was frustrating for ham radio operators. Based on that, the federal government gave the state the right to enforce these violations. There were no laws on the books to handle this situation, so HB 242 was drafted. He distributed HB 024202, **EXHIBIT(feh20a08)**, an amendment that gives some leverage in dealing with this problem, and three letters of support from CB operators. **EXHIBIT(feh20a09)** is from Darrell Thomas, **EXHIBIT(feh20a10)** is from Geary A. Schied, and **EXHIBIT(feh20a11)** is from William W. Loman. Amendment 024202 takes the Public Service Commission out and provides for a private right of action by the ham radio operator against the CB radio operator. Further, it gives the right to recover costs and attorney fees.

{Tape : 1; Side : B}

Proponents' Testimony:

Bill Ernhardt, amateur radio operator, said he supports HB 242. The problem comes because many CB radio operators are operating

high powered equipment, not only in the CB portion of the radio spectrum, but also in the amateur radio portion of the spectrum, which becomes an FCC offense. There are hundreds of unlicensed operators who are operating in the amateur radio portion of the band. He made a recording that he will give to **REP. BROWN** as evidence. He referred to page one, line 18 which says that regulation by the state of unauthorized citizens band radio equipment will assist the amateur radio community in reducing the interference from these illegal operations. In bringing it to the state, they are also asking the amateur radio community to take a look at this, and also support the local authority. They would help locate and isolate where the problem is from and the local authorities would take action, based on the evidence. They could back up local authorities with the technical expertise that is available in the amateur community. He asked for support.

Steve Schmitz, Helena, representing himself, said he supported the bill. The amateur radio community is very broad and very active, and one of their primary functions is to come to the community's aid in disaster situations. They have good equipment, good operating procedures and do a good job in the event of emergencies like tornados, hurricanes, and earthquakes. From that standpoint, ultimately, the reason they would like to see state support with this issue is because there are times they should not be interfered with. The radio spectrum provides a broad range of frequencies over which you can communicate. The FCC has carefully divided that spectrum up among various users, all the way from the military to state and local law enforcement, to the amateur community, and to the citizens band operators. There are fairly significant licensing requirements for the various radio frequencies, and amateur radio operators have to take substantial tests and show their proficiency in operating the radio. Citizens band radio does not require that, in that frequency. The way that issue was taken care of is they were limited to operating at a very low power, within their frequency range, so they didn't interfere with anyone else. Now, because of access to higher powered equipment, they have been able to go beyond that power rating and cause this interference. It interferes not only with ham radio operators, but with television, cordless telephones and commercial radios.

Opponents' Testimony: None

Informational Witnesses:

Patrick Heffernan, Montana Logging Association, said he wanted the committee to know that the logging industry also has a significant problem with radio interference. Loggers use radios

for communication between members of their crews, to the base station for spare parts, diesel fuel, etc. More importantly, radios are a crucial part of their safety equipment, and an important part of flying logging and helicopter logging operations. In helicopter logging, the pilot has to communicate with the ground crew by radio when they are clear and he is able to hoist the load. With cable logging operations, the loggers in the woods communicate with the crane operators by radio. When there is interference on top of those frequencies, there can be very serious consequences. When people buy high powered equipment for mostly entertainment purposes, it is important that regulating agencies pay attention to the consequences.

Questions from Committee Members and Responses:

REP. MOOD asked if the problem is the fact that the CB band operators are actually violating the frequencies, or that the equipment is so strong that it leaks into the other frequencies. **Bill Erhardt** said it is both ways. They are running too much power within their own CB radio frequency and they are modifying this equipment to transmit in ham radio frequencies.

VICE CHAIRMAN DELL asked if this is like a neighborhood watch operation, where they police their own and turn over the information to authorities when anything is suspicious. Is that accurate? **REP. BROWN** said that is accurate. In the past, they didn't have that ability, they could tell the FCC, but the FCC wasn't doing anything to enforce it. With this, local ham radio operators will have the ability to determine where it is coming from and they can bring a suit against that entity and recover their costs if they are successful.

REP. DEE BROWN asked if this is really a problem of these people beefing up the equipment they have, or is it buying equipment that is already on the shelf and using that equipment. **REP. BROWN** said it is a two fold problem. The CB equipment is set up to operate at a maximum of four watts or 12 watts. They can buy an amplifier for that particular part of the radio spectrum, which will take their power up to 50 or 100 watts. Secondly, they are buying amateur radio equipment and modifying it to operate in their portion of the band. Most of the equipment that operates in those areas is 100-200 watts, so they modify it not only to operate in their portion of the band, but now they have the ability to operate in the ham radio portion too. **REP. DEE BROWN** asked why they would want to do this. **REP. BROWN** said they did a two week study and documented as much as they could. He said he spent 50-60 hours documenting. Approximately 60% of the people operating this equipment illegally with high power within

the CB band and out of the CB band are truck drivers on the road. The other 40% are base station operators, where they set their systems up from one home to another. With normal CB equipment, you can talk about 20 miles. With amplifiers or purchase of amateur radio equipment, the distance can be up to 1,000 miles. The idea behind citizen band radios is low power within a local area of communications.

REP. MOOD asked what kind of evidence would be needed to make this bill applicable. **REP. BROWN** said it relates to power; they need to show how many watts are being used within the citizens band portion of the spectrum. They would have to physically have testing equipment and put it on the equipment in question to obtain its output power. The second part would be operating illegally, and they can document that by doing a recording of the frequency spectrum showing what frequency they are operating on illegally. **REP. MOOD** clarified that they would have to get an injunction for permission to go into their home or seize it somehow. **REP. BROWN** said that is correct.

Closing by Sponsor:

REP. BROWN thanked the committee for a good hearing. He said now everyone can understand the frustration of trying to operate these radios and being interfered with. Many times this is under a safety situation, and they need to have a clear signal.

HEARING ON HB 271

Sponsor: **REP. JOEY JAYNE, HD 73, ARLEE**

Proponents: **Pam Bucey, Attorney General's Office**

Opponents: **None**

Opening Statement by Sponsor:

REP. JOEY JAYNE, HD 73, ARLEE, said that HB 271 is an administrative change extending the time for filing tribal agreements. Under Title 18 in the code, there is a provision for tribal and state agreements. The reason for these agreements is to promote cooperation between state and public agencies and the tribes for mutually beneficial activities and services. She said the current time limit of ten days is not sufficient to obtain the different signatures and file it back with the attorney general. There are more than 100 such agreements that must be approved every year, and they must be filed. Most are routine agreements providing for administration of various federal

programs, including temporary assistance to needy families and the social security act. The amendment will extend the time limit to 45 days and add language that says failing to file the agreement within the time specified does not affect the validity of the agreement. On line 19, page one, the word "area" is changed to "regional" for consistency with federal government designations. New Section 2 repeals outdated Section 18-11-111 which is agreements entered into prior to 1981. Section 3 is a new section that stipulates the secretary of state will send a copy of this act to each tribal government located on the seven Montana reservations. Section 4 makes this bill effective upon passage and approval.

Proponents' Testimony:

Pam Bucey, representing the attorney general's office and the Department of Justice said HB 271 is mostly housekeeping in nature. State Tribal Cooperative Agreement Act currently requires that agreements must be filed with several offices within ten days of their approval by the attorney general. Most of these are routine agreements that happen every year and provide for needed services. This bill is supported by state government agencies, the tribal council and counties. She distributed **EXHIBIT(feh20a12)** "Department of Justice informational leaflet on HB 271 and **EXHIBIT(feh20a13)** letter of support from Roosevelt County Sheriff.

George Oschenski, Confederated Salish and Kootenai Tribes said he is reading into the record **EXHIBIT(feh20a14)**, the testimony of tribal chairman Fred Matt. "The Confederated Salish and Kootenai Tribes of the Flathead Nation wish to extend our support for passage of HB 271 in its original form. That bill, to amend the timeframe for filing State/Tribal cooperative agreements, and other minor housekeeping provisions, improves a good existing piece of State law. This Tribal Nation has found the State/Tribal cooperative Agreements Act to provide a logical and pragmatic vehicle for resolution of intergovernmental disputes. HB 271 improves that law. We support passage of HB 271".

Russ Cater, Chief Legal Counsel for the Department of Public Health and Human Services (DPHHS) said the department supports this bill for the reasons just stated. **EXHIBIT(feh20a15)** is a letter from **Gail Gray, Director DPHHS** supporting HB 271.

Dave Woodgerd, Chief Legal Counsel for the Department of Revenue said they enter into agreements with tribal governments and have used this act to resolve disputes they have had over tax issues and it has been very useful.

Opponents' Testimony: None

Informational Witnesses: None

Questions from Committee Members and Responses:

REP. MOOD asked for clarification of the language on line 27, page one. Does that mean that the terms of the agreement will be abided by whether you file or not within that 45 day period?

REP. JAYNE said if it comes in on day 46, it would not be made invalid. **REP. MOOD** asked why there is a time limit at all if the validity of the agreement is going to be in place whether the requirements are met or not. **REP. JAYNE** deferred to **Sarah Bond, Assistant Attorney General** who said she believes the bill is a requirement to allow a public right to know. This is a good point, they could dispense with the time line altogether. But she feels that time lines are there to provide that state agencies get it done in a certain time period. Existing law is that such requirements are not deemed "material", such that they don't void the agreement. **REP. MOOD** said it would appear that what we are saying is that it is a nice idea to file, but you really don't have to. Isn't that essentially what we are saying? **Sarah Bond** said no, it doesn't mean you don't have to do it. This is a statement by the legislature that they believe these agreements should be filed on time in a variety of offices around the state. In her experience, such time lines are almost always adhered to, but if they are missed the validity is not affected. If you choose to remove it altogether, that would be your choice. She feels that the legislative intent is that the deadline should be met and that is a "savings clause" indicating it is not legislative intent that it is not material.

REP. DEE BROWN said she had the same questions and concerns of **REP. MOOD** and asked about making an amendment that says if failure to meet this deadline happens then somebody has to meet and discuss what the problem is. She said she does not like to leave it open-ended or it could just be left out. **Sarah Bond** said it is a question of legislative intent and there are similar deadlines throughout state statutes. Case law about them is that they are not material. Perhaps it was an error on their part to make that express in the statute. This may be considered a friendly amendment if you want to remove or amend it.

REP. SCHMIDT asked for an example of a cooperative agreement and is wondering why they wouldn't want to have something there by the 45th day if it has to be passed on to several agencies.

Sarah Bond said cooperative agreements come in all sizes and shapes and if an agency wants assistance, it is her function to

assist agencies in doing what needs to be done. For example, one of the reasons there is a letter of support from Roosevelt County is that they now have a 911 agreement and service area because they have a cooperative agreement with their tribe. There were grant funds available, but only if they cooperated with the Fort Peck tribes in that area and formed a joint board and were able to establish a 911 service area. In that case the agreement was between Roosevelt County and Fort Peck tribes and may have involved the sheriff as a separate office. Another type of cooperative agreement is cross deputization agreements which are local law enforcement agreements that are very important in maximizing scarce resources in Montana's rural counties. She said she has seen many cooperative agreements with time lines like this for state agencies, but she has never seen language such as mentioned earlier that would trigger something to happen if a time line is not met. Usually courts interpret such time lines not as jurisdictional in nature or as having any particular effect, but rather as a bench mark for the agency to meet.

REP. JUNEAU clarifies that it is just the filing of an agreement after everyone had agreed to it. **Sarah Bond** said this is a "public right to know" thing, everyone has at this point signed the agreement. If it is a tax sharing agreement, existing law requires there to be public meetings, both before the agreement is signed, and after everyone has signed. These are filed with the public offices as a matter of public record.

REP. SCHMIDT asked why this had to be added. What was the problem before? **Sarah Bond** said there were two problems: one it sits on someone's desk and is not filed within ten days, two is that occasionally there are people who believe that tribal governments do not have a right to exist and the attorney general gets sued or challenged because the state statute provides for such agreements and someone who doesn't like the agreement says that agreement is not valid. In those cases, they sometimes look for little things like "this agreement isn't valid....". It was an attempt to make clear legislative intent that the filing deadline for after everyone has signed it is a matter of public record and not a material component of the contract.

REP. OLSON said, doesn't the 45 days give more than enough time to file an agreement. **Sarah Bond** said it is intended to encapsulate current common law. Unless you wanted to make that a material component of the contract, it doesn't add anything. It is intended to be a signal from the legislature that you should do this within a certain time period. If you want to remove it, the court would probably find the same thing to be true. It was actually in response to people who wanted to challenge such

agreements, and they tend to look to see if all the i's are dotted and all the t's are crossed. **REP. OLSON** said we are always getting into this "public right to know". If documents aren't filed in a timely manner, he agrees with doing away with the 10 days as that is not reasonable. The 45 days is very reasonable. He asked how does the openendedness on line 27 fits into the "public right to know". **Sarah Bond** said it is just intended to encapsulate current common law. If it were removed and someone would make that challenge, the judge would rule the same way. It was simply a statement of existing law that was added because of certain challenges that have been made.

Closing by Sponsor:

REP. JAYNE said HB 271 is a fairly simple bill that has existed since 1981. The intent is just to ease the cooperation and the agreements between any public or state agency with tribal governments by extending the time frame from 10 days to 45 days. She said she did not think an amendment was necessary at this time. She urged a DO PASS on HB 271.

HOUSE COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND
TELECOMMUNICATIONS

January 25, 2001

PAGE 13 of 13

ADJOURNMENT

Adjournment: 4:45 P.M.

REP. AUBYN A. CURTISS, Chairman

LINDA KEIM, Secretary

AC/LK

EXHIBIT (feh20aad)